CF0000065637

Cr.A. – 462/05

High Court of Chhattisgarh
BILASPUR
17 MAY 2005
Reg. No. 89
Receip Clerk
High Court, Bilaspur

(2)

APPEAL OF PRISONER

No. 26/05 Name राम साय कोड़ाकू

Father's name सहदेव कोड़ाकू

Residence ग्रा0 कर्पान, थाना - चलगली सरगुजा Age 32 वर्ष

Sentenced सत्र प्र० क्र० - 297/04 धारा 302 On 18.3.2005

Under section आजीवन कारावास by माननीय अपर सत्र न्यायाधीश FTC अम्बिकापुर जि० सरगुजा या पर्वजिनि रामानुजगंज सरगुजा

it is explained to the prisoner that if he states or wishes to be represented by legal practitioner the Appeliate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear with-in seven days he may not heard at all. If the prisoner states that he does not wish to be represented by legal practiotioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1. Date of Application for copy of Judgement 18.3.2005
2. Date of which copy received 2.5.2005
3. Date on which appeal sent 11.5.2005
4. Whether the prisoner wished to be represented or not Yes/~~No~~.

No. 26/2005 Name राम साय कोड़ाकू उर्फ सहदेव कोड़ाकू

Continued in केन्द्रीय Jail अम्बिकापुर सरगुजा (छ.ग.)

No. 2564 Dated 11-05-05 19

Forward to the CHIEF JUDICIAL MAGISTRATE माननीय अतिरिक्त सत्र न्यायाधीश (क्षेत्रीय) उच्च न्या० बिलासपुर (छ.ग.)
to gather which a copy of order passed in the case for favour of transmission to the proper Appelliate Court.

संलग्न - निर्णय प्रति लिपि - 6 पन्ने ।

Superintendent
Central Jail Ambikapur (Surguja)

Date of receipt in C.J.M's Office

Date of receipt record to accompany

Memo of Appeal of the Appeliate Court

No. Dated 19

Forwarded to the

C.J. Magistrate

Date of receipt in Appeliate Court

(19)

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A.No.468 **सन्** 2005

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Division Bench: -

Hon'ble Shri L.C. Bhadoo &

Hon'ble Shri Dhirendra Mishra, JJ.

26-2-2007:-

Shri Abhay Tiwari, counsel for the appellant.

Shri M.P.S. Bhatia, Panel Lawyer for the State/respondent.

Oral judgment dictated on *Dais*.

L.C. Bhadoo, J.

Perused communication dated 3/2/2007 sent by the Superintendent, Central Jail, Ambikapur, mentioning therein that the accused is in jail as no order has been received to release him.

Vide order dated 5/11/2006 substantive sentence imposed upon the accused/appellant was suspended by this Court and he was directed to be released on bail. It appears that in pursuance of that the accused has not been able to furnish bail bonds, he is languishing in jail, therefore, with the consent of learned counsel for the parties, appeal is being disposed of finally.

This appeal is directed against the judgment of conviction and order of sentence dated 18/3/2005 passed by the Additional Sessions Judge (FTC) Ramanujganj in S.T. No.297/2004 whereby learned Additional Sessions Judge after holding the accused/appellant guilty for commission of offence under Section 302 of the I.P.C., sentenced him to undergo imprisonment for life & to pay a fine of Rs.2,000/-, in default of payment of fine to further undergo R.I. for 1 year.

P.T.O.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Case of the prosecution is that PW-4 Kotari Bai daughter of the deceased lodged merg intimation Ex.-P/6 in the Police Station Chalgali to the effect that she is the resident of Manikpur. Her mother Budhni Bai was residing in village Kadiya all alone. Her younger sister Nanki and her husband Ramsai were taking care of her since last 3-4 years. Yesterday on 6/4/2004 her maternal uncle Parmeshwar came and informed her that her mother has died. On hearing this, she went to village Kadiya and saw that her mother was lying dead on the ground. There was injury on her head and blood was oozing out of the injury. She inquired from brother-in-law Ramsai, but he did not disclose anything. Receiving the said report, Station House Officer registered crime under Section 302 of the I.P.C. under F.I.R. Ex.-P/7. The body of deceased Budhni Bai was sent for post-mortem examination to the Primary Health Centre, Chalgali where Dr. Janeshwar Singh (PW-7) conducted post-mortem on the body of Budhni Bai, prepared the post-mortem report Ex.-P/8 in which he opined that cause of death is traumatic shock due to head injury and death was homicidal in nature. While in the police custody, the accused gave memorandum Ex.-P/4 regarding weapon of offence i.e. wooden genda, in pursuance of that same was recovered at the instance of the accused under Ex.-P/5.

After completion of the investigation charge sheet was filed against the accused in the Court of Judicial Magistrate, 1st Class, Ramanujganj, who in turn committed the case to the Sessions Judge Surguja from where learned Additional Sessions Judge, Ramanujganj received the case on transfer.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

The prosecution in order to establish the charge against the accused examined 11 witnesses. Statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied material appearing against him in the prosecution evidence, stated that he is innocent and has been falsely implicated in the crime, therefore, he be acquitted. Learned Additional Sessions Judge after hearing learned counsel for the respective parties convicted and sentenced the accused as aforementioned.

We have heard learned counsel for the parties.

Learned counsel for the accused/appellant submitted that death of the deceased was accidental and not homicidal. He further submitted that there is no evidence on record to show that the accused was author of the crime in question.

On the other hand, learned counsel for the State/respondent supported the judgment of the trial Court.

In order to appreciate arguments advanced by learned counsel for the appellant we have perused evidence available on record as well as judgment of the trial Court. In this case, there is no direct or ocular evidence. The whole case rests on the circumstantial evidence. PW-5 Nanki Bai is the daughter of the deceased and wife of the accused. It is admitted position that the accused used to reside with his mother-in-law deceased Budhni Bai along with his wife Nanki Bai, as there was no male member in the family of deceased Budhni Bai. She had 3 children. All the 3 daughters were married. Two daughters namely, Kotri Bai and Rajmat used to reside with their families in their in-laws' house. At the time of

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

commission of crime only deceased Budhni Bai, her 3rd daughter Nanki Bai, wife of the accused and the accused used to reside in the house. Nanki Bai (PW-5) has stated that she along with her mother went to collect *Mahua* flowers, at that time her husband Ramsai came with Lathi and rushed towards her to attack her with Lathi on which her mother intervened and asked the accused to call his son, on which the accused said that 'why he should call her son, she can go and call her son, on which she replied that she is going to Murka, asked the accused and her mother to take food and go for sleep. She left for Murka. Next day morning she came to know that her mother has died, on which she came and saw her mother. There was blood on her head, ears and mouth. She does not know who has committed murder of her mother. PW-4 Kotri Bai, other daughter of the deceased, has stated that the accused and his wife Nanki Bai used to reside with her mother. They used to take care of her mother. Her maternal uncle Parmeshwar came and informed her that her mother has been murdered, on which she came to village Kadiya and saw that there were injuries on head, mouth and blood was oozing out of it. The accused made her sister run; thereafter he might have attacked her mother as at that time the accused was all alone in his house. He however did not disclose anything to her. Even on her enquiry he did not disclose anything and ran away. PW-9 Shyam Lal has stated that Budhni Bai used to reside with the accused and her daughter. On the fateful day when he returned from the forest after collecting *Mahua* flowers, the accused was abusing his wife and he was running after his wife having club in his hand to assault her, therefore, she left for village Murka with her children. Next day morning when he returned after collecting *Mahua* flowers at about 1 p.m. the accused came and informed him that his

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

mother-in-law has died, therefore, he went to see the body of Budhni Bai. He saw that there was injury on temporal region and blood was oozing out of it. The accused was in the habit of consuming liquor and he used to quarrel with his wife and mother-in-law. Similar is the evidence of PW-10 Ramlal.

As per the evidence of PW-10 Ramlal, PW-9 Shyam Lal and PW-4 Kotri Bai, the accused was in his house when the dead body of the deceased was lying in the house. Wife of the accused Nanki Bai has already stated that as the accused was running after her to beat her, therefore, she left the house for village Murka, thereafter only the accused and Budhni Bai were in the house, as per the evidence of PW-4 Kotri Bai, when she came to know from her maternal uncle Parmeshwar that Budhni Bai has died, she came to village Kadiya, at that time the accused was there, she inquired from him as to how Budhni Bai has been murdered, the accused did not disclose, on the contrary, he ran away. Injuries were present on the head of her mother. PW-9 Shyam Lal and PW-10 Ramlal have also stated that the accused used to quarrel with the deceased and his wife. Even PW-9 Shyam Lal has stated that the accused came to him and disclosed that his mother-in-law has died whereupon he went to the house of the accused and saw that the deceased was lying in injured condition and she was already dead. From the above evidence, it is established that the accused was very much in his house and he did not disclose as to how his mother-in-law sustained injuries. Section 106 of the Evidence Act envisages that 'When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him'. Therefore, when the accused was in the house, Budhni Bai was in injured condition and on enquiry by Kotri Bai, he did not disclose anything, on the

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -6-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

contrary, he ran away, the accused went to PW-9 Shyam Lal and disclosed him that his mother-in-law has died, but how the deceased sustained injuries, he did not disclose. These facts were in the special knowledge of the accused as he was the only person who was in the house where the body of the deceased was lying in injured condition, therefore, burden was on the accused to explain how Budhni Bai sustained injuries. Even in his statement under Section 313 Cr.P.C. he has not explained as to how Budhni Bai sustained injuries, on the contrary, he has stated that he is innocent and has been falsely implicated in the crime. Hence, the accused has failed to discharge burden which was on him. As per the evidence of Dr. Janeshwar Singh, he conducted postmortem on the body of the deceased, there were injuries on temporal region and face, she died on account of haemorrhage and as a result of shock on account of injuries. Therefore, in view of the above, it is established that the accused was in the house when Budhni Bai sustained injuries but he did not explain as to how she sustained injuries. As per the evidence of doctor, cause of death was on account of injuries on the head and the death was homicidal in nature. The conduct of the accused is also relevant because as per evidence of wife of accused Nanki PW-5, as per evidence of PW-9 Shyam Lal and PW-10 RamLal accused was in the habit of quarrelling with wife and mother-in-law. His conduct after the commission of crime is also relevant because he did not disclose anything about the injuries sustained by Budhni Bai. In the circumstances, it is established that the accused was author of the crime in question. To this extent, we do not find any illegality or infirmity in the judgment of the trial Court convicting the accused for commission of crime.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Learned counsel for the appellant further submitted that from the evidence available on record, the prosecution has not been able to establish that the accused assaulted the deceased with intention to cause her murder. Even Dr. Janeshwar Singh (PW-7), who conducted post-mortem, has not stated that injuries were sufficient in the ordinary course of nature to cause death.

On the other hand, learned counsel for the State/respondent supported the judgment of the trial Court.

It is admitted position that the doctor who conducted postmortem has not stated that injuries found on the head of the deceased were sufficient in the ordinary course of nature to cause death. Even there is no evidence on record to establish that the accused while assaulting the deceased had intention to cause her death. The injuries were on temporal region, on account of that there was haemorrhage, even there was no fracture, therefore, we are of the considered opinion that the prosecution has utterly failed to establish that the accused assaulted the deceased with intention to cause her death. However, the manner in which the accused assaulted the deceased with Lathi (Genda) on temporal region the accused was definitely having knowledge that by assaulting the deceased with Lathi he is likely to cause death, therefore, knowledge can be attributed to the accused, as such offence against the accused under Section 304 Part-II I.P.C. was made out. Therefore, conviction under Section 302 of the I.P.C. cannot be sustained.

In the result, the appeal of the accused/appellant partly succeeds. Conviction and sentence imposed upon the accused/appellant under Section 302 of the I.P.C. are set aside, instead thereof, he is convicted

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश — 8 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
Barve	under Section 304 Part-II of the I.P.C. and sentenced to undergo R.I. for 5 years. It is stated that the accused is in detention since 9th April 2004 till date, therefore, he shall be entitled for set off of the above detention period against the sentence imposed upon him. Sd/- L.C.BHADOO Judge	Sd/- DHIRENDRA MISHRA Judge